IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 8178 of 1998

Between:

Gutikonda Narasimha Rao, S/o. Seetaramaiah,
R/o. 14-4-71, Morrispet,
Tenali, Guntur Dist.

..... PETITIONER

AND

1 Union of India, rep. by secretary Ministry of Defence,
New Delhi.
2 Controller of Defence Accounts(Pension),
Allahabad.
3 Officer-in-Charge,
Army services Corps Records (Supply), Bangalore-560 007.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ ,order or direction particularly in the nature of a writ of mandamus i)declare the action of the respondents in not granting disability pension to the petitioner as arbitrary, illegal, unjust, unsustainable and violative of articles 14 and 21 of the constitution of India.ii) Consequently direct the respondents to release the disability Pension from 11.3.1988 together with interest @ 12% p.a. and pass orders.

Counsel for the Petitioner :MR. NUTY RAM MOHAN RAO

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in not granting disability pension to the petitioner, as arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India, and consequently to direct the respondents to release the disability pension from 11.3.1988.

It is the case of the petitioner that he joined the Indian Army on 6.6.1969 and worked as Personal Assistant. He served the Army with all devotion and he was rated as excellent in character. Serving in Army as “Personal Assistant” to various formation commanders whether in peace or field was a tremendous responsibility and one has to work according to the temperament and requirements of each of the commanders. Besides, the job required greatest attribute of absolute faith to the commander as well as to the system, wherein access to highly confidential matters is a regular feature. During his long tenure of more than 18 years, his performance was well appreciated and rewarded.

While so, he was admitted to 167 Military Hospital (Pathankot) on 7.7.1985 in

the medical category 'AYE'. He was treated for Cerebral Vascular accident with Hemiplegia (RT). He was hospitalized up to 14.8.1985. Then, he was discharged on sick leave by the hospital. On expiry of sick leave, he reported at Military Hospital, Secunderabad, for re-categorization. A duly constituted Medical Board, after examining the petitioner and the connected medical documents, categorized him as Medical Category 'CEE' (temporary), for six months. On both these occasions, his unit was Headquarter No.29, Mountain Arty Brigade, which was located in a field area. In the armed forces, the medical board observes its opinion on a particular form called "AFMSF-15". In the case of the petitioner, such an observation was made on 28.10.1985 and was forwarded to the higher ups. Due to his poor health condition, he could not undertake such a long journey to Headquarter No.4, where he was posted. Therefore, he returned to A.S.C. Records (Supply), Bangalore, where he was directed to report Command Hospital, Air Force, Bangalore. He was admitted to Command Hospital (Air Force), Bangalore, on 5.1.1988, for treatment. The duly constituted Invalidating Medical Board, after scrutiny of the earlier medical board proceedings and considering the severity of his disability, placed the petitioner in medical category "EEE" with disability of 80%, for two years, initially. These proceedings were approved by the competent authority and accordingly he was discharged from his service on 11.3.1988 with pension, due to medical de-categorization.

It is the contention of the petitioner that he is entitled for disability pension as per Clause 4.6 of the 'Brochure', dealing with Invalid Pension Gratuity and Disability Pension. Whereas, the petitioner was granted only service pension and the disability pension is denied, he filed the present writ petition.

A detailed counter affidavit has been filed denying the allegations made by the petitioner and it is asserted that the medical board constituted is the proper authority to assess the reasons for acquiring such disability and only when it is

found that such disability is acquired due to the nature of services rendered by him in the Army, then only the petitioner is entitled for disability pension as per Regulation 173 of Pension Regulations Part-I and in the instant case, the Medical Adviser (Pensions) attached to CCDA (Pension), is the competent authority to decide the attributability/aggravation aspects. After due consideration of his case and the medical documents submitted along with his claim, the pension claim of the petitioner was rejected vide their letter No.G-3/88/3510/III/433 dated 9.5.1989, on the grounds of non-attributability of the disability of the petitioner, which is of only a constitutional disorder. The petitioner was invalidated from service after considering entire material including AFMSF-81 form. Therefore, it is submitted that the claim of the petitioner is unjustified and the writ petition is devoid of merits and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material available on record.

As per the AFMSF-81 (Revised) Form and Part B thereof, it is clearly indicated that the disability was aggravated and attributable only to the service rendered by the petitioner in the Army. This part of the Column was supposed to be filled in by the Commanding Officer, under whom the petitioner worked as a Personal Assistant. The Commanding Officer, against the Column No.6 (a) and Column No.13 of Part B of the said Form, had categorically indicated that the disability was acquired due to the service rendered by the petitioner. It is the case of the petitioner that this aspect was not properly considered by the Medical Board while considering his case for disability pension, on being referred by the competent authority for the purposes of categorizing him on the medical side and recommending for disability pension. They simply stated that the disability suffered by the petitioner, though 80%, is only attributable to his constitutional defect and not attributable to the service rendered by him in the Army.

In the counter filed by the respondents, except stating that the Medical Board has looked into the previous record and other medical documents and thus came to the conclusion that the disability suffered by the petitioner cannot be attributed to the service rendered by him, but no where, it is stated that the AFMSF-81 (Revised) Form was properly taken into consideration by the Medical Board since the officer, under whom the petitioner worked, has categorically stated that the disability was aggravated by the service due to severe stress and strain, that too, in daily routine of the jobs rendered by the petitioner.

Admittedly, the petitioner was working as a Personal Assistant to the Commander and he worked under various commanders and the duties entrusted to the petitioner is of high responsibility apart from spending energies every day. Be that as it may, since the Medical Board earlier found that the disability is 80% and the recommendations of the Commanding Officer under the said Form were not properly considered, I am of the considered opinion that the authorities may place the matter before the Medical Board again, for reconsideration duly placing the AFMSF-81 (Revised) Form before it and if necessary by re-examining the petitioner in this regard, physically and pass appropriate orders.

In the result, the writ petition is partly allowed to the extent indicated above and the respondents are directed to reconsider the matter as indicated above, within a period of six months from the date of receipt of a copy of this order. No order as costs.

23.6.2005

CVM

To,

1 The Secretary, Union of India, Ministry of Defence,
New Delhi.
2 The Controller of Defence Accounts (Pension),
Allahabad.
3 The Officer-in-Charge,
Army services Corps Records (Supply), Bangalore-560 007.

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4. 2 CCs to Mr. A. Rajasekhar Reddy, Assistant Solicitor General of India, High Court Buildings, Hyderabad (OUT).

5. 2 CD copies.